

February 19, 2002

Protection of the Fremont Hills
The Hill Area Initiative of 2002

The people of the City of Fremont do ordain as follows:

Section 1. Purpose

The purpose of this ordinance is to protect the hills of Fremont from harmful and unnecessary development. The ordinance maintains existing use of the hills for agriculture, outdoor recreation, very low-density residential, and open space. Its goal is to protect natural resources, watersheds and water quality, wildlife habitat, beauty and tranquility, and scenic hill views, while permitting access to nature and outdoor recreation for the residents of Fremont. It is designed to prevent urban-type sprawl to steep and frequently unstable terrain, thereby avoiding high costs to taxpayers for public facilities and services, as well as loss to the environment. The ordinance will limit traffic congestion and air and water pollution. By providing a needed balance between urban development and rural, natural qualities, the measure helps preserve the special character and identity of Fremont and the high quality of life in the City.

Section 2. Findings

The citizens of Fremont do deliberately find and declare the following:

- (a) **Development in Fremont:** There has been extensive urban development in Fremont. Many of the valuable natural qualities of the City have been impaired by this development. Much of what remains is in jeopardy. According to current projections, the City will add 30,000 more residents in the next two decades. Large amounts of residential development have been proposed in the Fremont Hills. There is mounting pressure to develop these open space and environmentally sensitive lands.
- (b) **The Fremont Hills:** The hills are an important part of Fremont's identity and its historic and valued characteristics. They are now used for agriculture, low-density housing, and outdoor recreation. They provide the City with watershed, wild animal and plant habitat, recreation, beautiful views, access to nature, and a striking peaceful, rural contrast to the heavily built-up flat lands. At present, there are generally no public facilities in the area except for narrow country roads. The hills are vulnerable to wildfires because of their rugged terrain, flammable native brush, and remoteness; typically they are designated a Critical Fire Area from May through October.
- (c) **Effects of Hill Development:** Intensive development in the hills would eliminate or damage agriculture, wildlife, watersheds, scenic views and other valuable environmental qualities. It would add to air and water pollution, and exacerbate already intolerable levels of traffic and congestion in Fremont. It would impair the ability of the City to provide public facilities and services at a reasonable cost to taxpayers and residents. Substantial development would eliminate variety and change the esteemed character of the City.
- (d) **Current Development Regulation:** Existing Fremont General Plan policies do not provide adequate, secure protection for the hill area against unnecessary and harmful development. That part of the hills now within the City limits has twenty (20) acre minimum parcel size, but the area is subject to much higher residential density whenever government decides to provide public services. That portion beyond the City boundary, under County jurisdiction, has 100 acre minimum parcel size. But the City has no minimum parcel size or other restrictions on use of that area if annexed. Some members of the City Council have indicated they would support substantial development in the area.
- (e) **Agriculture:** A combination of soils and climate make the Fremont Hills highly productive rangelands, among the "best natural grazing" areas in the State. Generally, agriculture in the hills requires large parcels, contrary to residential development which entails reduction in parcel size. Substantial development interferes with agriculture in various significant ways. A large amount of the land in the hill area is covered by agricultural preserve contracts, which permit assessment for property tax purposes at agricultural rather than development values.

- (f) Critical Wildlife Habitats: Substantial parts of the hill area have been designated by the United States Fish and Wildlife Service as Critical Habitat for wildlife threatened with extinction. Land use must be carefully controlled to avoid ruining this habitat, or obstructing the corridors that connect habitats. Hill area habitats are vital for biological diversity.
- (g) Watercourses: Streams that flow through Fremont into San Francisco Bay arise in the hills. Excessive development can have a adverse effect on the quantity of water in those streams, including flooding, and on the quality of the water, which is used through underground aquifers for drinking and other household purposes in the City. Development generally exacerbates erosion and siltation, as well as pollution. Problems are created in trying to prevent flooding and erosion, yet preserving the natural beauty and other values (wildlife habitats, vegetation) of streams.
- (h) Traffic: Traffic congestion and long commutes are becoming increasingly intolerable, adversely affecting the quality of our lives in countless ways. Fremont's General Plan cited fourteen intersections at which the delays ranged from substantial to severe, and predicts that by 2010, eighteen intersections will operate at even worse levels of service. Development in the hills would place more traffic on the Sunol Grade of I-680, perhaps the most congested freeway in California, as well as on the already clogged streets of Fremont.
- (i) Housing: This ordinance will support properly planned, compact development in and near existing urban development where infrastructure is available. This is much more economical to users and taxpayers than sprawl in the hills, where there are now no sewer or water lines, roads are inadequate for development, and construction is often difficult and costly. There are extensive areas of slope instability in the hill area; much of the development there would occur on parcels with geologic constraints. Fremont has provided more than its share of housing for the region; there is a large surplus of housing over jobs in the City.
- (j) Burden of Proof: Within the meaning of California Evidence Code Section 669.5(c)(3), this ordinance is designed to protect agricultural use as defined in Government Code Section 51201(b), and open space land as defined in Government Code Section 65560(b).
- (k) Federal and State Law
This ordinance is subject to Federal and State law. Because that law is not always clear or settled, and because of frequent changes in the law, this ordinance contains provisions that it does not apply if and when the application would be inconsistent with Federal or State law. These provisions are designed to prevent the ordinance, over time, from being in conflict with law.

Section 3. Protection of Legal Rights

Notwithstanding their literal terms, the provisions of this ordinance do not apply to the extent that courts determine that if they were to be applied they would deprive any person of constitutional or statutory rights or privileges, or otherwise would be contrary to the United States or State constitutions or law. The purpose of this limitation is to make certain that the ordinance does not infringe any person's constitutional or legal rights or violate the law in any way, or subject the City of Fremont to any legal liability. To the extent that a provision or provisions of this ordinance are not applicable because of this section, the City may permit only that minimum development required by law which is most consistent with the provisions and purposes of this ordinance, and that complies with other General Plan provisions.

Section 4. Area Covered by Ordinance

- (a) This ordinance applies to the Fremont Hill Area (referred to hereafter in the body of this ordinance as the Hill Area). For purposes of this ordinance the boundary of the Hill Area is the "Toe of the Hill" (as defined in Section 16), from the Alameda County-Santa Clara County boundary north to the Fremont-Union City boundary, east along that boundary to Alameda Creek, east and south along Alameda Creek to Calaveras Creek, south along Calaveras Creek to the Alameda County-Santa Clara County boundary, and west along that boundary to the Toe of the Hill. (The diagram in Appendix 1 depicts approximately the boundary of the Hill Area, the existing Fremont city limit, and certain prominent features of the Hill Area. The diagram is for purposes of illustration only; the boundary is that described in this section.)

- (b) Part of the Hill Area is not within the city limits of Fremont. This ordinance will be operative with respect to areas within that part if and when they are annexed to the City.
- (c) Areas now designated "Residential" in the Hill Area are redesignated "Hill Open Space."

Section 5. Additions to the General Plan

Sections 4 (c), 6 through 16, 19 and the description of the Hill Area in Section 4 (a) of this ordinance are additions to the Fremont General Plan. They shall be located in Chapter 3, Land Use, subject to relocation or further location in the Plan, as deemed appropriate by administrators or officials.

Section 6. Minimum Parcel Sizes

- (a) The minimum new parcel size shall be at least twenty (20) acres in the Hill Area within the Fremont city limits on January 1, 2002, except as permitted in Section 11 for clustering.
- (b) The minimum new parcel size shall be at least one hundred (100) acres in parts of the Hill Area that are annexed to Fremont after January 1, 2002, except as permitted in Section 11 for clustering.

Section 7. Uses

The following uses and their normal and appropriate accessory uses and structures (as well as uses preemptively authorized by Federal and State law) are permitted in the Hill Area, if they comply with all of the provisions of this ordinance and with other City prohibitions, restrictions, regulations, conditions and requirements:

- (a) One single family residence on each legal parcel, secondary units to the extent required by State law, and dwelling units for persons employed on the parcel, or on a ranch or farm that includes the parcel.
- (b) Rental of rooms, including with board, not exceeding two units in a residence.
- (c) Agriculture including grazing, horticulture, floraculture and arboriculture, but not including (1) commercial feedlots, except for livestock that primarily receive their sustenance in the Hill Area from grazing on a ranch or farm that includes the parcel, (2) large or medium-size pig farms, poultry ranches, or commercial vineyards, or (3) Christmas tree farms.
- (d) Small-scale, low-intensity rearing, custodianship, training or care of animals, other than ruminants which shall be governed as agriculture by subsection (c), that does not cause material environmental harm.
- (e) Commercial uses, limited to the following:
 - (1) Outdoor recreation and pastimes predominantly for active participants (this category of permitted uses does not include, among other things, amusement or theme parks and motor vehicle tracks, courses or recreational activities);
 - (2) Nature observation, study or enjoyment;
 - (3) Accommodations for short term occupancy and for provision of food and drink (including low-intensity campgrounds and picnic facilities), predominantly for persons engaged in outdoor recreation or nature observation, study or enjoyment;
 - (4) Uses in historic structures, incidental to preserving the structures and their historic qualities and setting;
 - (5) Home occupations and offices, subordinate to residential use and conducted primarily by occupants of the property, that will have no deleterious effects on the environment or visual qualities or materially increase local traffic;
 - (6) Neighborhood stores and services, predominantly to serve the unmet agricultural and other needs of the population of the Hill Area, that cannot practicably be met outside the Area;
 - (7) Healthcare;
 - (8) Cemeteries;
 - (9) Packaging, processing, storage or sale of agricultural produce or plants, a substantial portion of which were grown in the Hill Area;
 - (10) Small-scale extraction and processing of rock, soil, or water;
 - (11) Special, occasional short-term events related to agriculture or animals, that do not interfere substantially with the use of land for agriculture or cause lasting adverse environmental harm or visual effects, provided access for vehicles and emergency equipment and for parking meet generally applicable City standards.

- (f) Institutional and other non-profit uses that primarily serve Hill Area residents, or whenever and to the same extent like commercial uses would be permitted.
- (g) City and other government facilities and infrastructure, and public utility facilities, that are limited to meeting the needs created by uses permitted in the Hill Area unless the City Council reasonably finds more extensive public need, that cannot practicably be met outside the Hill Area. However, this exception for more extensive public need shall not apply to waste treatment and disposal or commercial electrical power generating facilities. Publicly provided outdoor recreation and nature observation and enjoyment and ancillary accommodations are permitted whenever like commercial uses would be allowed.

Section 8. Areas of Special Environmental Concern – Further Safeguards

In addition to the other provisions of this ordinance, the following restrictions apply:

(a) Wetlands and Riparian Corridors

Development or conversion to agriculture or more intensive agriculture is not permitted on or adjacent to wetlands if the quantity or biological quality of the wetlands will be reduced measurably. "Wetlands" are areas permanently or periodically covered by water, where hydrophytic vegetation is present under normal conditions, or that have soils primarily hydric in nature.

No development shall be located within a riparian corridor, except for otherwise permitted flood control, erosion control, water supply, transportation facilities, fences or hiking or equestrian trails. "Riparian corridors" are the areas within 200 feet from the center of a permanent or intermittent stream bed.

(b) Critical Wildlife Habitat

No development or conversion to agriculture or more intensive agriculture materially impairing Critical Habitat, designated by the United States Fish and Wildlife Service for preservation of endangered or threatened plant and animal species, may be permitted.

(c) Steep Slopes

No building site, in whole or in part, may be located on a slope of thirty percent (30%) or more. No building may be located on a site that has access over a slope of thirty percent (30%) or more. No greenhouses, in whole or in part, may be located on a slope of fifteen percent (15%) or more. Cultivated agriculture may not be conducted on a slope of thirty percent (30%) or more.

(d) Ridgelines and Hilltops

Structures may not be located on ridgelines or hilltops, or where they will project into the visual plane of a ridgeline or hilltop, as viewed from public roads, trails, or other public places, unless there is no other building site on the parcel or on a contiguous parcel in common ownership when this ordinance becomes effective or thereafter.

Unless there is no other possible configuration, new parcels may not be created that have no building site other than a ridgeline or hilltop, or that would cause a building to project into the visual plane of a ridgeline or hilltop, as viewed from a public place.

Section 9. Development Envelopes

All buildings on a parcel shall be placed within a contiguous "development envelope" not to exceed two acres, except for buildings that must be located outside the envelope for agricultural uses or security needs, or for government or public utility facilities that the City Council reasonably finds require a more extensive area.

Section 10. Maximum Floor Areas

The maximum aggregate floor area for all floors (regardless of composition) in buildings on a parcel may not exceed one percent (1%) of the parcel's area, or 20,000 square feet, whichever is less, but for any parcel a minimum of 10,000 square feet shall be permitted. Greenhouses are subject to a maximum aggregate floor area of one percent (1%) or 40,000 square feet, whichever is less. Government facilities are not subject to the aggregate limit to the extent that the City Council finds reasonably that they are necessary to serve important public needs, that they cannot practicably be located outside the Hill Area, and that they must exceed the floor area maximum. The City Council may also authorize a larger area if needed for

housing for agricultural workers, or for processing, packaging or storage of agricultural produce or plants, a substantial portion of which were grown in the Hill Area, or for other agricultural purpose.

Section 11. Clustering

If feasible, clustering shall be required for residential and other permitted development on contiguous parcels in common ownership to the extent that clustering or partial clustering would reduce overall visibility of development from public places. Clustering, which also may be described as transfer of density or development rights, may be allowed for permitted development on any parcels if the effect is to reduce overall visibility from public places or, consistent with that, to reduce environmental harm. Required or permitted, clustering may be on a single parcel or on separate, adjacent parcels that do not exceed two acres.

Section 12. Visual Safeguards

- (a) New or reconfigured parcels, including those resulting from lot line adjustments, must be created or drawn to minimize visibility of development from public places.
- (b) To the extent practicable, structures shall be located, including by setbacks from parcel boundaries, on that part of a parcel or on contiguous parcels in common ownership that minimizes visibility from public places, except agricultural structures necessary for agricultural purposes may be located in more visible areas.
- (c) In all cases, appropriate landscaping, preservation of vegetation, screening, and building materials shall be required by the City to minimize the visual impact of development. Consistent with that end, alteration of topography by grading, excavating, filling or other development activity shall be minimized. Development shall be subordinate to and blend with the natural and open space qualities of the area where located, so as to be as unobtrusive as possible, and not to impair those qualities. To the maximum extent practicable, lighting must be located, designed and shielded so as to confine direct rays to the parcel where the lighting is located.
- (d) The height of buildings shall not exceed 35 feet.

Section 13. Lot Line Adjustments

Apart from the regular subdivision process, the City may not permit lot line adjustments, except as required by State law, if the adjusted parcels for any reason would not comply with the General Plan, including minimum parcel sizes, and all city zoning and building ordinances, or adjustments between more than four (4) parcels, or part of a plan or series of adjustments between more than four (4) parcels.

Section 14. Certificates of Compliance

The City shall not grant certificates of compliance or conditional certificates of compliance except as required by State law. The City shall impose all conditions permissible under State law on conditional certificates of compliance, and shall hold the owner or subsequent transferee to strict compliance with these conditions. A certificate of compliance, by itself, creates no right to develop, nor diminishes in any respect the City's authority to control development.

Section 15. Easements

An easement, conveyed to the City or the City's appropriate designee, shall be required for each parcel with respect to which development is permitted, including parcels from which development is transferred in cases of clustering. The easement shall bar any further development that would not be permitted under this ordinance. The easement shall be negative only; it shall convey no possessory interest to the City or its designee, nor confer any right of public access. The parcel remains wholly in private ownership, so far as the easement is concerned, with exclusive occupancy and use in the owner. The City has no responsibility or liability because of the easement for acts or omissions on the parcel, except in good faith and effectually to remedy or prevent violations of the easement. The easement shall terminate when the parcel is restored substantially to its pre-development condition, so far as the effects of development are concerned.

Section 16. Definitions

For purposes of this ordinance, unless the text or context clearly indicates otherwise:

"Development" includes the placement or construction of any building or structure, including mobile dwelling units, and grading, excavation or fill of land.

"Building" is any structure having a roof supported by walls or columns, or both, except for greenhouses, and intended for the shelter, housing or enclosure of any person, animal or property.

"Structure" includes but is not limited to any building, greenhouse, tower, antenna, utility line, retaining wall, dam, pumping facility, water tank or anything constructed or erected, the use of which requires location on the ground or attachment to something located on the ground.

"State law" means State Constitutional provisions, valid statutes and regulations, and court declared common law.

"Toe of the Hill" means a line along the base of the hills, where the natural grade first becomes twenty percent (20%) or more, on the western side of the Hill Area from the Fremont-Union City boundary to the Alameda-Santa Clara County boundary, and on both sides of Niles Canyon and Route 680 east of Mission Boulevard to the Fremont city limits.

Section 17. Further Amendments of General Plan

Pre-existing provisions of the General Plan, including maps, diagrams, figures and tables, are deleted or amended as detailed in Appendix 2 to eliminate inconsistencies with this ordinance.

Section 18. Application

- (a) This ordinance does not affect the validity of existing parcels, development, structures, and uses that are legal at the time it becomes effective. However, parcels, development, structures and uses may not be expanded or changed in ways that are inconsistent with the prohibitions, limits or requirements of this ordinance, except as authorized by State law.
- (b) The restrictions and requirements imposed by this ordinance shall apply to proposed development that has not received all necessary discretionary City and other authorizations and approvals prior to the ordinance's effective date, except to the extent precluded by State law.

Section 19. Inconsistent City Plans, Ordinances and Actions

- (a) To prevent conflicts within the General Plan, otherwise unavoidable by this ordinance, once the ordinance is submitted to the City Clerk for a title and summary any subsequent amendments of the General Plan, except as approved by the voters after approval of this ordinance, to the extent inconsistent with this ordinance, are superseded and nullified. More generally, if there is any inconsistency between provisions of this ordinance and other provisions of the General Plan, despite efforts in Appendix 2 to avoid all inconsistencies, those other provisions to the extent they are inconsistent are superseded and nullified and this ordinance is intended to and shall govern.
- (b) Any provision of any existing or subsequently adopted specific or area plan, that is not part of the General Plan, and any provision of any zoning ordinance or any other ordinance, resolution or policy of the City of Fremont, not part of the General Plan, is ineffective to the extent that the provision is inconsistent with this ordinance, except as State law may mandate otherwise.
- (c) No subdivision map, development agreement, development plan, use permit, variance or other discretionary action inconsistent with the prohibitions, restrictions or requirements of this ordinance may be permitted, approved or taken by the City, or its agencies or officials, except as required by State law.
- (d) General Plan provisions, ordinances and other City regulations are not to be deemed inconsistent with and are not affected by this ordinance to the extent that they impose additional prohibitions, restrictions, conditions, regulations or requirements beyond this ordinance on the division, development or use of land in the Hill Area. In that respect, this ordinance shall be deemed to establish only minimum standards.

Section 20. Compliance and Enforcement

The City Council and other agencies, officials and employees of Fremont shall implement and enforce the provisions of this ordinance diligently and effectually. They are hereby mandated by the voters of Fremont to use the most effective means available to prevent, abate and remedy violations.

Section 21. Effective Date

This ordinance shall become effective as provided by statute, except if all the General Plan amendments permitted by law in the year in which the ordinance is approved by the voters have been made, the ordinance shall become effective and amend the Plan on January 1 of the following year.

Section 22. Amendments

Except as provided otherwise in this section, this ordinance may be amended only by vote of the people of Fremont. However, the City Council may impose further prohibitions, restrictions, conditions and requirements in addition to this ordinance on division, development and use of land. The Council may also make or provide for technical or non-substantive modifications to the terms of the ordinance, for purpose of clarification, consistency, coherence, or organization of the General Plan. Any modifications must be consistent with the substantive provisions and purposes of this ordinance. With respect to this ordinance, material included in Appendix 2 that is not part of the provisions of this ordinance does not require a vote of the electorate to be amended. However, an amendment may require a vote because of a prior initiative.

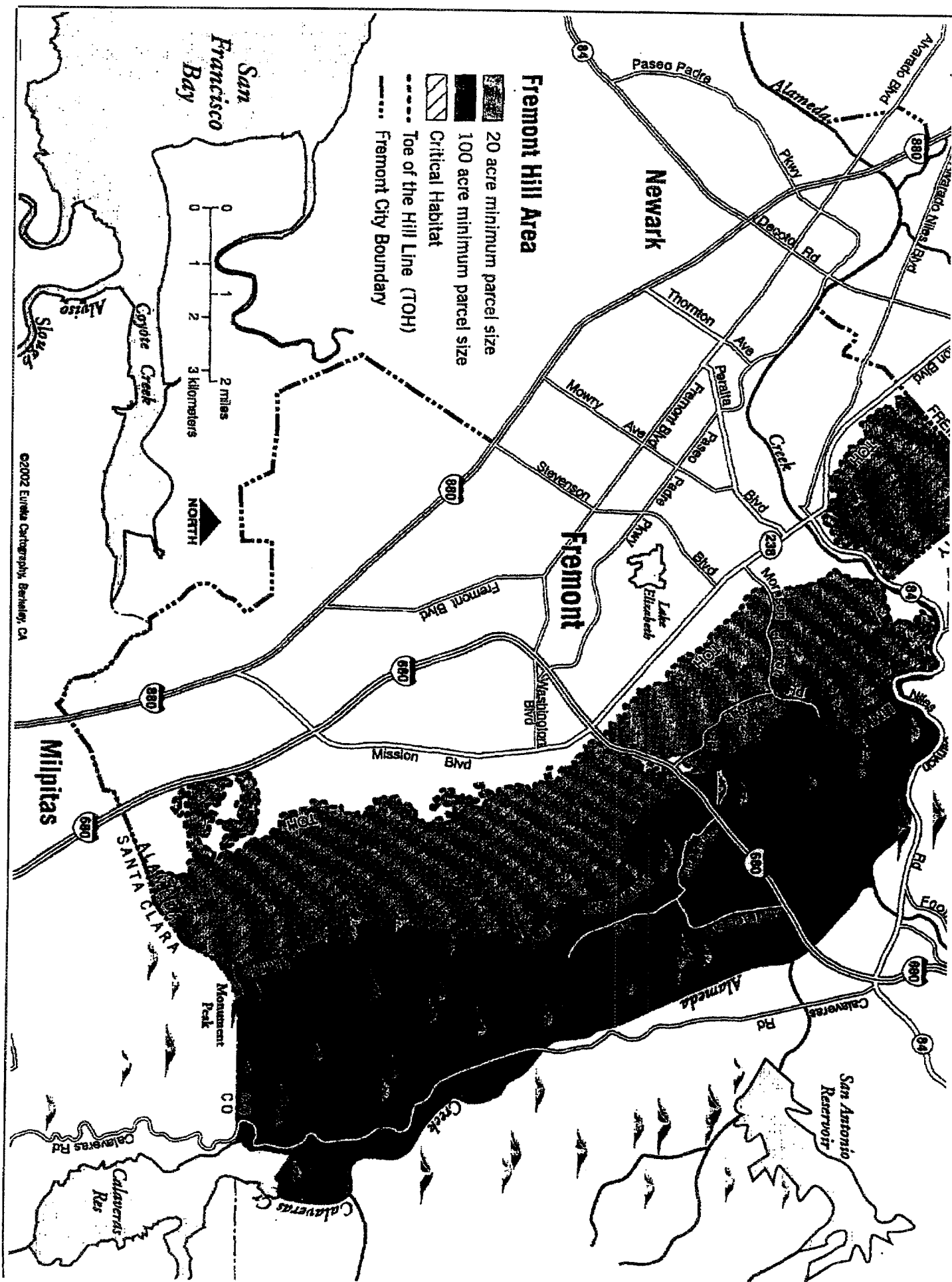
Section 23. Severability

If any portion, section, subsection, paragraph, subparagraph, sentence, clause, or application of this ordinance is held unconstitutional or otherwise invalid, the invalidity of that part or application shall not affect the validity of any other part or application unless the effect clearly would be to defeat overall the purposes of the ordinance. Consistent with that, the provisions and applications of this ordinance shall be deemed severable, and the voters of Fremont expressly and deliberately declare that each portion, section, subsection, paragraph, subparagraph, sentence, clause and application would have been enacted as it was irrespective of the fact that one or more other parts or applications is declared invalid unless the effect clearly would be to defeat overall the purposes of the ordinance.

Section 24. Conflicting Measures

If there are other General Plan amendments on the same election ballot as this measure that are approved by the voters, this ordinance shall nevertheless be effective, except to the extent that its provisions are in actual, irreconcilable conflict with specific General Plan amendments of one or more other measures and that measure or those measures received more votes. Provisions in another measure otherwise purporting to nullify the provisions of this ordinance shall be ineffective.

Appendix I
Diagram Depicting Hill Area



Appendix 2
Deletions from and Amendments to the Fremont General Plan

Land Use Diagrams, General Plan Atlas

Areas designated Residential in the Hill Area as defined by the Hill Area Initiative of 2002 shall be redesignated as Hill Open Space on the Hill Planning Area Land Use Diagram, on the appropriate pages of the General Plan Atlas, and on any Summary Land Use Diagrams that exist. Study Area 11 and the Development Reserve Overlay Boundary shall be deleted from these same maps, diagrams and figures.

Material deleted is in strikeout type. Material added is underlined. Material unchanged is omitted, even within paragraphs, unless deemed necessary to make sense of an amendment.

Chapter 3 – Land Use

Page 3-2, last paragraph

Development in the Hill Area is controlled by an initiatives passed in 2002 and 1981, and the area is defined by those initiatives.

Page 3-21, second paragraph under Hill Planning Area

The voters of Fremont considered the eastern hills to be important to the character of the City and adopted an initiatives in 2002 and 1981 to provide special protection for them. The initiatives included a General Plan amendments. No substantive changes to the initiative provisions now in effect amendment can be made without another vote. However, additional policies can be adopted to supplement the initiative-adopted amendments so long as they are consistent with the amendments. Accordingly, ~~the initiative-adopted General Plan amendments now in effect are~~ is presented in their entirety in the Goals, Objectives and Policies sections of this Plan Chapter, as required by the initiatives.

Page 3-23, three paragraphs under Projections

Development in most of the Hill Planning Area within the City's boundaries is controlled by the hill area initiatives. Development outside of the City's boundaries is under the County's jurisdiction unless and until an area is incorporated into the City. ~~The Hill Area Initiative would not apply to any area incorporated into the City unless the City chooses to apply it. The 2002 initiative would apply to any area defined as Hill Area by the initiative that is incorporated into the City.~~

~~The 2002 initiative establishes a development reserve overlay (DRO) which permits only very low density residential development (one unit per 20 acres) for those parts of the Hill Area (as defined by the Hill Area Initiative of 2002) within the City limits on January 1, 2002. For parts outside the City limits on January 1, 2002, the permitted residential density is one unit per 100 acres if annexed to the City, unless gravity-served public water and sewer are available, and police, fire services and roads meeting City standards are available.~~

~~When services are available, development is permitted at a range of densities depending on location, degree of constraint, and land use designation on the General Plan previous to the initiative. Each subarea is discussed below (including those outside of the City).~~

Page 3-24

Hill Face. ~~If services are made available, the 2002 Initiative permits only very low density development (one unit from five to per twenty acres) in this area, depending on the degree of constraint. Only very limited development is expected on the Hill Face. Increased development on the upper Hill Face and ridgeline may occur if additional access roads and services are made available from the Vargas Plateau (see below).~~

Niles Hills. ~~If services are made available, a portion of this area east of the ridge is designated for low density (.5 to 1.5 units per acre) development. The remainder This area is limited to one unit per twentyfive to ten acres. Only very limited development is expected in the Niles Hills. A Specific Plan being prepared~~

for the adjacent Union City hills may eventually lead to making urban services available to this area thereby allowing for the removal of the DRO restrictions.

~~Vargas Plateau West. A portion of~~ This area is designated for very low density residential development (.05 to 1.5 units per acre.) Only very limited development is expected in the Vargas Plateau West. If services are available, several hundred to over a thousand residential units could be built. In addition to homes, this level of development would also require the provision of schools, parks and some retail uses. Without urban services, less than a hundred units would be expected in this area. Whether or not to provide services is therefore the key decision in determining the future of this area. The remainder of the area is permitted to develop at very low densities if services are available (one unit per five to ten acres, depending on degree of constraint).

Vargas Plateau East

If incorporated into Fremont, the area would be subject to Fremont's land use plans. ~~It is anticipated that, similar to the contiguous land within the City, only very low densities (maximum of one unit per 2,100 acres) would be permitted unless services were made available. If services were available, a variety of uses are possible.~~

Before any decision can be made regarding expansion of the City boundaries, many issues must be evaluated, including access, provision of services and water quality impacts of development in this area. Especially important to the City is the impact of any possible development on the watershed of the San Francisco Water Department which ultimately supplies a portion of the City's drinking water.

Page 3-25

~~Mission Creek. Most of this area faces severe geologic and access constraints. Development potential is one unit per 20 acres. Most of this area faces severe geologic and access constraints. If services could be provided, development potential would be permitted from one unit per five to ten acres depending on degree of constraint. Due to the constraints on this area, very little development is expected.~~

Sheridan Road. If annexed to Fremont, development potential would be limited to one unit per 100 acres. Only very limited development is expected in the Sheridan Road area. This area has significant development potential due to its proximity to the freeway and supply of relatively flat land. Extension of services to the Vargas Plateau, could also increase pressure to extend services and permit increased development in portions of this area. Accordingly, the General Plan recommends that the future of this area be considered in the planning studies for the Vargas Plateau.

Land Use Plan

The land use plan for most of the Hill Planning Area is prescribed by the initiatives. ~~For those areas outside of the City, this plan calls for consideration of their long term future in planning studies. Another study will better delineate the exact location of the Toe of the Hill and Ridgeline in the Warm Springs Planning Area above I-680. The need for and location of a school site on the eastern side of I-680 also requires further review.~~

The General Plan calls for the following residential land uses in each of the Hill Planning Area sub-areas.

Niles Hills. This plan retains existing policies for this area which would permit some very low density residential development if services are made available. The City will need to monitor the Union City planning process in regards to this area.

Vargas Plateau West. This Plan would permit very low density residential development. General Plan takes no position on the advisability of providing services to the Vargas Plateau. The Plan recommends a two step planning study process to arrive at a decision regarding the area's future, as discussed in the Goals, Objectives and Policy section of this Chapter.

Page 3-26

Vargas Plateau East. If and when this area is annexed to Fremont, this Plan would permit very low density residential development. Because provision of services to Vargas Plateau West would increase pressure to

incorporate the remainder of the Plateau into the City, the General Plan includes this area in the planning studies which will consider the future of this area as a whole.

Mission Creek. This Plan would permit very low density residential development. The plan makes no changes in past policy for this area.

Sheridan Road. If and when this area is annexed to Fremont, this Plan would permit very low density residential development. Because provision of services to the Vargas Plateau would also make services more readily available to this sub-area, the General Plan calls for the proposed planning studies for the Vargas Plateau to consider the future of this area as well.

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Open Space Land Use Designations

Allowed Uses

The Hill Area as defined in the 2002 initiative is governed by policies and provisions of that initiative to the extent they are more restrictive or impose more requirements on development, including on allowed uses, than Policies 4.1 – 4.5 and shown in Table 3.7.

Page 3-62

Hill Face Open Space: This designation applies to all areas between the "Toe of the Hill" and the "Ridgeline," as shown on the Planning Area Land Use Diagrams and Summary Map. Very low density residential use is allowed, depending on the availability of urban services, access and site-specific constraints (see "Hill Planning Area" for further discussion). Agricultural uses are allowed.

Hill Open Space: This designation applies to the remainder of the Hill Area within the City limits on January 1, 2002, outside of the Hillface and above the Toe of the Hill. Very low density residential use is allowed, depending on the availability of urban services, access and site specific constraints (see "Hill Planning Area" for further discussion). Agricultural uses are allowed.

Page 3-65

Table 3-7
Open Space Land Use Designation*****

	Intensity (du/acre*)	Residents/acre***
Agriculture	1 du/20 acres	.14
Hill Face Open Space	1 du/20 acres	.14
• Urban Services available:	1 du/5 – 20 acres**	.14 – .55
• No services available:	1 du/20 acres	
Hill Open Space	1 du/20 acres	.14
• Urban services available:	1 du/5 – 20 acres	.14 – .55
• No services available:	1 du/20 acres	.14
Institutional Open Space	Does not apply	****
Private Open Space	Does not apply	****
Open Space		
Unconstrained	1 du/acre	2.74
Constrained	1 du/4 acres	.68

* du/acre = dwelling units per gross acre

~~** Development potential depends on site-specific criteria (see "Hill Planning Area" for further discussion)~~

*** Assumes 2.74 residents per household

**** No residential units are permitted in this land use category

***** In all open space districts, building height shall not exceed 35 feet.
Impervious coverage shall not exceed 15% of the lot area unless
additional coverage is approved by use permit.

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Hill Planning Area

Definitions

Adopted by Initiatives on March 16, 1982, by Implementing Ordinance 5344

1. The "Hill Area" as defined by the 1981 initiative includes generally the area lying easterly of a line which begins at the Milpitas City limit, runs north along Route 680 and Mission Boulevard, and then north along Mission Boulevard to the Union City limit. The Hill Area includes Niles Canyon, Mission Pass and the Mission Hills, but excludes a small area at the mouth of the Niles Canyon and at the base of Mission Pass.

The "Hill Area" as defined by the 2002 initiative is the area bounded by the Toe of the Hill, from the Alameda County-Santa Clara County boundary north to the Fremont-Union City boundary, east along that boundary to Alameda Creek, east and south along Alameda Creek to Calaveras Creek, south along Calaveras Creek to the Alameda County-Santa Clara county boundary, and west along that boundary to the Toe of the Hill.

3. The "Toe of the Hill" shall mean a line along the base of the hills, where the natural grade first becomes twenty percent (20%) or more, on the western side of the Hill Area from the Fremont-Union City boundary to the Alameda-Santa Clara County boundary, and on both sides of Niles Canyon and Route 680 east of Mission Boulevard to the Fremont City Limits, shall mean a line along the base of the hills along which the natural grade is a maximum of 20 percent, including the Niles Canyon and Route 680 east of Mission Boulevard.

Page 3-69

Adopted by 1981 Initiative as amended by 2002 Initiative

Policy LU 6.1: Residential development shall be prohibited on constrained land, subject to exceptions provided herein. Except for prohibitions or restrictions imposed by the 2002 initiative, The Planning Commission may allow development on constrained land in order to better conform to the terrain and where all technical conditions for safe development are assured.

Policy LU 6.2: Subject to the prohibitions, restrictions, densities, conditions and requirements imposed by the 2002 initiative, For the Hill Area generally compatible uses are agriculture, recreation and very low density residential which complies with standards and densities set out in the General Plan text. The densities set forth below are maximums. The City may provide for lower densities, especially in agricultural preserve areas.

Policy LU 6.3: Areas on the Hill Face and the Ridgeline are hereby redesignated "Hill Face Open Space." Development in this area is limited to one residential dwelling unit per twenty acres (.05 units per acre) a density range between one residential dwelling unit per ten acres and one residential dwelling unit per five acres (-1 TO .2 units per acre). Constrained and unconstrained land may be combined within a single ownership in order to comply with the density requirements herein, provided that there is at least one contiguous acre of unconstrained land per residential dwelling unit. Development on accessible but purely constrained land is limited to one unit per twenty (20) acres (.05 units per acre), provided that a site which

meet the other standards herein is available. The density may be increased from the minimum only when development and access is designed and located so as to avoid substantial environment degradation, and eliminate or substantially eliminate its visibility from any location below the Toe of the Hill within a radius of one mile of the site.

Page 3-70, in second and third paragraphs of Policy LU 6.4

Development in the area designated Hill Open Space is limited to one dwelling unit per twentyfive (205) acres of land (2 .05 units per acre).

3. Areas designated "Residential" are redesignated Hill Open Space with a density of one dwelling unit per twenty (20) acres (.05 units per acre). remain so designated, with the current densities.

~~Policy LU 6.5: The Development Reserve Overlay (DRO) District is placed on the Hill Area above the water service elevation as established by the Alameda County Water District as of the date of adoption of this amendment [November 3, 1981]. The objective of this overlay is to insure that land is developed in an orderly and timely manner which avoids commitment of the land to residential use before municipal services are available.~~

- ~~a. All new parcels created in the Development Reserve Overlay District shall be limited to one residential dwelling unit per twenty acres.~~
- ~~b. Lands may be removed from the Development Reserve Overlay Area when there are adequate public services including gravity served public water and sewer systems, fire and police, and public or private streets meeting City standards.~~

Page 3-72

~~Policy LU 6.14: A study may be undertaken to assess the costs and benefits to the City of extending services and permitted development in the East and West Vargas Plateau and Sheridan Road sub-areas. (see separate Hill Planning Area map for identification of study area.)~~

~~Issues to be considered in this evaluation include, but are not limited to the following:~~

- ~~~ Impacts on water quality, water supply and erosion~~
- ~~~ Impacts on the Alameda Creek watershed and water supply~~
- ~~~ Impacts on the Hill Face. Every effort should be made to protect the Hill Face from development~~
- ~~~ Accessibility to the rest of Fremont~~
- ~~~ Impacts on existing urban services~~
- ~~~ Impacts on Sanitary District~~

~~If development is found to be appropriate, the study should roughly identify both the area proposed for development and a preferred level of development.~~

~~A similar study is being prepared by Union City for the Niles Hill subarea. Fremont will make its separate evaluation of the Niles Hills. Any development permitted shall be within the City of Fremont.~~

Page 3-73

~~Policy LU 6.15: If extension of services and development in portions of the Vargas Plateau subarea and/or Sheridan Road subarea are found to be advisable during the study conducted under Policy 6.14, a second planning effort may be undertaken to develop a "Specific Plan" for the area identified in the first study as appropriate for development.~~

~~The Vargas Plateau's two step planning process may be consolidated to a single specific plan to be financed by the land owners, which shall include a Facilities Plan. The ultimate development policies for the plateau will be determined after completion of the Specific Plan.~~

~~Policy LU 6.17: While planning is underway for the East and West Vargas Plateau and Sheridan Road subareas, no additional urban services shall be provided by the City of Fremont to this area and the City~~

~~shall not consider requests to expand its boundaries or sphere of influence. A minimum parcel size of 20 acres per unit shall be maintained within the City until services are made available. Proposed subdivisions of five units or more shall be subject to environmental review and to an assessment of the proposed subdivision's impacts on existing City services and roads.~~

Page 3-74

Hill Planning Area Design and Development Policies

Policy LU 6.19: ~~A~~Consistent with Hill Area Initiative of 2002, all development shall be designed to minimize disturbances of the natural terrain and vegetation.

Page 3-75

Policy LU 6.22: ~~D~~Consistent with the Hill Area Initiative of 2002, developments shall be designed to be compatible with their natural surroundings. Developments shall be designed to maximize retention of natural topographic features, such as drainage swales, slopes, rock outcroppings, vistas, landmark trees, natural foliage and plant formations, historical sites, riparian areas and areas of natural beauty. Development shall minimize disturbances of any natural watercourse or streams and wildlife breeding areas.

Policy LU 6.24: Consistent with the Hill Area Initiative of 2002, Hillside development shall conform to the natural grades and not scar the existing terrain and vegetation by excessive grading. Buildings should fit the land, not vice versa.

Policy LU 6.27: Consistent with the Hill Area Initiative of 2002, clustering of units, density transfers and other techniques shall be utilized to reduce the need for earth movement and enable steep hill slopes, wooded areas and areas of special scenic beauty or historic interest to be preserved. The potential to reduce impacts through density transfers shall be considered and used to the maximum extent feasible as early in the development review process as possible.

Policy LU 6.28: ~~Density incentives shall be considered to enable areas to be preserved through dedication to the City in fee or easement.~~

Page 3-76

Policy LU 6.32

Implementation 2: ~~A Prior to annexing land, a planning study shall be undertaken to evaluate the advisability of incorporating this land into the City and/or permitting development, as discussed in Policy LU 6.14 and 6.15.~~

Page 3-77

Development Reserve Overlay

~~The Development Reserve Overlay (DRO) applies to land without urban services in the Hill Area. The use, definition and application of this overlay designation is discussed under "Hill Planning Area."~~

Page 3-81, first paragraph

A second policy is adopted for larger study areas (Warm Springs, Centerville, Vargas Plateau/Sheridan Road, Northern Plain and Fremont Shores) where the land use direction is dependent on the outcome of specific studies and deliberation by the Planning Commission and Council. For these areas, the previously existing land use designation is maintained until the Study is completed. None of these study areas shall include the Hill Area as defined by the Hill Area Initiative of 2002.

Policy LU 7.8: The Warm Springs BART Specific Plan Study Area, the Fremont Shores Study Area, the East and West Vargas Plateau/Sheridan Road Sub-Areas and the Centerville Specific Plan Study Areas are also identified as "Study Areas."

Page 3-82 and 3-83, Table 3-8 General Plan Study Areas

HILL PLANNING AREA²

11. Vargas Plateau/Sheridan Rd. ~~Open Space, Residential,
Agricultural (County)~~

Chapter 4 - Housing

Page 4-6

Table 4-4 does not include the development potential of the hills of Fremont above the Toe of the Hill with the exception of known projects. The Hill Face (see Land Use Chapter for definitions) is highly constrained and has very limited development potential. ~~This Plan calls for a study to assess the advisability of permitted significant development east of the Ridgeline. Due to the high degree of uncertainty and wide range of development potential, this plan makes no assumptions regarding development in the area east of the Ridgeline.~~

Page 4-22

HOUSING (H) GOAL 3:

Housing Affordable and Appropriate for a Variety of Fremont Households at All Economic Levels
Throughout the City consistent with the Hill Area Initiative of 2002

Page 4-24

OBJECTIVE H 3.3:

A range of housing by type, size and cost throughout the City, consistent with the Hill Area Initiative of 2002.

Page 4-26

Policy H 3.3.5: Maintain and/or adopt appropriate land use regulations and other development tools to encourage the development of housing affordable to those of very low and low income throughout the City, consistent with the Hill Area Initiative of 2002.

Chapter 6 – Open Space

Page 6-3

Second paragraph under Hill Planning Area, Setting

The term Hill Area in figure 6.1 denotes that portion of the Hill Planning Area that was within the City limits on January 1, 2002, except for Mission Hill West. This definition of Hill Area applies throughout the setting subsection of this Hill Planning Area part, (excluding Vargas Plateau East, Sheridan Road and Mission Hills West) controlled by the 1981 hill initiative.

Agricultural Use

Much of the hills is in productive agricultural land used for Grazing (see the Soils section of the Natural Resources Chapter). ~~Over half the Hill Area (including some public lands) is covered by agricultural preserve (Williamson Act) contracts.~~

Page 6-4

Regulatory Environment

Development in the Hill Area demarcated in figure 6.1 is controlled by a citizen initiatives passed in 2002 and 1981. The regulations of thoseat initiatives are were incorporated in the General Plan and are found in the appropriate Chapters of this General Plan, particularly in the Land Use Chapter under "Hill Area." That chaptersection should be reviewed for all regulations and definitions for the Hill Area.

Page 6-5

Private Lands

² Also under study in the Hill Planning Area is the exact location for the Ridgeline and Toe of the Hill and a possible school site location for an area east of I-680 and south of Mission Boulevard (as shown in the Hill Area and Warm Springs Planning Area Maps). Other features of the study area are certain roadway alignments. See land use and transportation diagrams for the locations of these study items.

~~Under the 1981 Hill Initiative, the extension of urban services to areas at higher elevations than currently (1990) served would have increased the land's development potential. Extension of services over Mission Pass to the Vargas Plateau West would allow for significant residential development, especially on parts of the Vargas Plateau.~~

~~The impacts and benefits of development in the Vargas Plateau East area and its potential for development easterly of the city boundary line require careful analysis prior to any commitment to provide services. Accordingly, development in the Hill Area is further limited under the 2002 Initiative, this plan calls for a two-phase planning process described in the Land Use Chapter under "Hill Planning Area."~~

Page 6-17

Policy OS 1.3.1: Acquisition and development of a Regional Park on the Vargas Plateau by the East Bay Regional Park District shall be supported ~~encouraged~~ by the City. Park facilities and access should be consistent with the City's goals for this area as defined during the Hill Area planning process described in the Land Use Chapter.

Implementation 1: Encourage the East Bay Regional Park District to acquire, plan and develop a Vargas Plateau Regional Park or Preserve in cooperation with the City of Fremont.

Chapter 7 – Public Facilities

Page 7-12 under Projections

Most major flooding problems in the flatlands have been corrected. ~~As~~ If urban development reaches further into the hill area, the District ~~would~~ face new challenges in attempting to provide adequate protection from flooding while preserving the natural beauty and other open space values (wildlife habitats, vegetation) of the creeks. Hill area development could also potentially increase downstream flows and siltation, thereby affecting flood control structures in the flatlands area.

Chapter 9 – Natural Resources

Page 9-12, second and third paragraphs under Hills

The Hill Face of Fremont is protected by the Hill Area initiatives from development which would have a significant impact on its habitat values.

~~The Eastern Hill Area includes the area east of the visible ridgeline. This General Plan calls for a two-step process for determining the level of potential development in this area, as described in the Land Use Chapter.~~

Page 9-47, second paragraph

Portions of the Hill Face are also in public ownership, and additional areas are expected to be protected in the future. The privately owned portions of the Hill Face are protected by the Hill Area initiatives from major development. However, the initiatives permits limited development on the Hill Face. Each visible home on the Hill Face will have an impact on the visual character due to the prominence of the Hill Face and its relatively pristine nature.

Page 9-50

Biological Resources

Policy NR 1.1.1:

Implementation 2: Riparian Corridors are roughly identified in Figure 9-3. Concurrent with the development application the extent and characteristics of riparian corridors shall be carefully assessed to a minimum distance of 100 feet from the center of the creek bed, except in the Hill Area as defined by the Hill Area Initiative of 2002, where the distance shall be 200 feet.

Page 9-69

Policy NR 13.1.1:

Implementation 2: ~~Beyond~~ Beyond restrictions elsewhere in this Plan, consider adopting further standards for structures and landscaping on the Hill Face, to minimize contrast and reduce visual impacts.

Chapter 10 – Health and Safety

Page 10-32, second paragraph under Residential Areas

~~Development above the Toe of the Hill is controlled by the provisions of the Hill Area initiatives. Without the availability of urban services, development is limited to one unit per 20 acres on land within the City of Fremont on January 1, 2002. As discussed in the Land Use Chapter, this Plan identifies a process for evaluating the benefits and costs of providing urban services and allowing for increased development east of the Hill Face. One of the issues to be assessed is the impact on fire service. If development is recommended, then a Specific Plan will be prepared which will address, among other issues, how best to provide fire service to this area.~~

Page 10-52

Policy HS 4.1.1:

~~Implementation 5: Continue to encourage improvements where the required fire flow and minimum residual water pressure standards are not met. However, water service should not be provided in a way which allows for development of the Hill Face in a piecemeal fashion. Improvement should be part of an overall public interconnected network.~~

PDGP-II HOUSING BACKGROUND REPORT

Page 34

~~Hill Planning Area. The Hill Planning Area of Fremont encompasses 13,500 acres on Fremont's eastern flank within the city limits, and additional land outside of the city's existing boundaries. The development of this area within the city's boundaries is largely controlled by the 2002 and 1981 Hill Area Initiatives. The development potential of approximately 7,000 acres in private ownership and above what is called the "Toe of the Hill" (see Land Use Chapter for further definition and discussion) is limited by lack of services and environmental constraints. Due to the difficulty in predicting the amount of development in this highly constrained area, no residential development is assumed for the Hill Planning Area above the Toe of the Hill in this General Plan. The development potential of the Hill Planning Area would increase if urban services were made available. Urban services would lead to a very limited increase in the development potential of the land on the most constrained Hill Face, but a significant increase in the less physically constrained plateau area east of the Hill Face. The development potential of the city's eastern hills is addressed under "Hill Planning Area" in the Land Use Chapter. As discussed in that section, several planning studies are required before the City arrives at any conclusion regarding the advisability of development in this area. Until those studies are completed, no future development potential is assigned to this area.~~

Page 12-2

~~Modify Zoning Maps: The 1990 General Plan Land Use Diagrams designate general land uses for property within the City. The Zoning Maps provide a much more specific designation for each property. The following table lists each of the 1990 General Plan land use designations and the Zoning districts deemed to be consistent with that designation, but in the Hill Open Space and Hill Face Open Space designations, only to the extent that the zoning districts are in fact consistent with the prohibitions, restrictions, regulations, requirements of the Hill Area Initiative of 2002.~~